

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

|                        |   |                               |
|------------------------|---|-------------------------------|
| JOHN CRUISE,           | : |                               |
|                        | : | Civil Action No. 4:CV-06-1897 |
| Plaintiff,             | : |                               |
|                        | : |                               |
| v.                     | : | (Judge McClure)               |
|                        | : |                               |
| WARDEN DONATE, et al., | : |                               |
|                        | : | (Magistrate Judge Smyser)     |
| Defendants.            | : |                               |

**O R D E R**

January 4, 2007

On September 26, 2006, plaintiff John Cruise, then an inmate at the Lackawanna County Prison, Scranton, Pennsylvania, filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff was since been released on home confinement.

The matter was initially referred to United States Magistrate Judge Andrew Smyser. On October 18, 2006, after an initial screening of the complaint, the magistrate judge determined that the complaint failed to state a claim upon which relief can be granted and directed plaintiff to file an amended complaint. In the order, the magistrate judge gave plaintiff until November 20, 2006 to file the amended complaint and warned that if he failed to do so, the complaint would be

dismissed.

Plaintiff failed to file an amended complaint by the November 20, 2006 deadline, and has still not filed one. On December 12, 2006, the magistrate judge issued a six-page report recommending that the complaint be dismissed for failure to state a claim upon which relief can be granted.

No objections have been filed to the report and recommendation. The magistrate judge's thorough report and recommendation has convinced us that plaintiff's initial complaint failed to state a claim upon which relief can be granted. Therefore, we will adopt the magistrate judge's report and recommendation in full and dismiss the action without prejudice.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. United States Magistrate Andrew Smyser's Report and Recommendation is adopted in full. (Rec. Doc. No. 10).
2. The complaint is dismissed without prejudice for failure to state a claim upon which relief can be granted.
3. The clerk is directed to close the case file.

4. Any appeal from this order is not taken in good faith.

s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge